

Defendants.

On April 12, 2023, Defendants in their individual capacities filed their Motion to Stay Discovery pending resolution of Defendants' Motion for Summary Judgment. (ECF No. 48.) On April 13, 2023, before a response was filed, the Court granted Defendants' Motion to Stay Discovery, explaining that, "[p]ursuant to Local Rule 26.1(b), discovery is stayed upon the filing of a dispositive motion until a ruling on the motion is entered." (ECF No. 51 at 1.) Local Rule 26.1(b) provides, in part, that "the filing of a dispositive motion ... shall stay ... all other formal discovery until a ruling on the motion has been made." The Court's Modified Pretrial Order sets April 24, 2023, as the deadline for HRDC to submit its expert witness designation, and May 24, 2023, as the deadline for Defendants to submit their expert witness designation. (ECF No. 38 at 4.)

HRDC seeks clarification from this Court whether its Order to Stay Discovery (ECF No. 51) and the Court's Local Rule 26.1(b) operate to stay all deadlines in the Pretrial Order, including HRDC's April 24, 2023, deadline to submit its expert designation.

HRDC is of the position that the Court's Order and Local Rule 26.1(b) do in fact stay all deadlines in the Pretrial Order, including the April 24, 2023, deadline for its expert designation, as well as the deadline for Defendants' designation. Expert witness disclosures are governed by Fed. R. Civ. P. 26(a)(2), with Rule 26 generally operating to govern all discovery. Further, the Court's Local Rule 26.1 is titled "Discovery," and subsection (e) specifically governs the discovery of expert testimony, including expert designations. Additionally, HRDC interprets Defendants' Motion to Stay, the Court's Order, and Local Rule 26.1(b) as staying all obligations for Defendants to engage in discovery, including its obligation to file its expert designation on May 24, 2023. It would thus be inequitable for HRDC to be held to the April 24, 2023, deadline

with discovery stayed, while Defendants would be excused from their obligation and would have longer than the 30-days provided to file a rebuttal report.

Furthermore, Defendants have objected to HRDC's Fed. R. Civ. P. 34 request to inspect the mailroom at Park County Detention Center, and HRDC's expert report will not be complete without its expert having an opportunity to conduct an inspection at the jail. Defendants have taken the position that the Court's stay Order had the effect of staying the Request. HRDC agrees that the Court's Order stayed the inspection request and has not sought to file a motion to compel because of the stay Order. Submitting an incomplete expert report could be detrimental to HRDC's case, but at the very least, it would cause an additional unnecessary financial expense for HRDC. Depending on the Court's decision on Defendants' Motion for Summary Judgment, HRDC can re-serve its Request to inspect the mailroom at the jail and if denied HRDC can bring a motion before this Court.

Counsel for HRDC, Joshua M. Halen, Esq., emailed on April 14 and 17, 2023, to confirm with Defendants' counsel their positions on whether the April 24, 2023, deadline was stayed. Counsel for Defendants in their individual capacity, Senior Assistant Attorney General Peter Howard, responded on April 14, 2023, that Defendants were unsure whether the expert designation deadline set by the Court's Pretrial Order was stayed and whether the parties could agree to stay the deadline absent a specific Court order. Mr. Halen responded on April 17, 2023, consistent with the above regarding HRDC's position on the effect of the Court's Order and Local Rule 26.1(b) operating to stay all discovery, including the expert designation deadline. Mr. Howard did not respond to the April 17th email. Counsel for Defendants in their official capacities did not respond to any of the emails from Mr. Halen or Mr. Howard.

Based on the foregoing, HRDC seeks clarification from the Court on the effect of its Order staying discovery (ECF No. 51) and Local Rule 26.1(b), and whether the parties' respective deadlines to submit expert designations have been stayed.

DATED: April 20, 2023

Respectfully Submitted,

/s/Joshua M. Halen

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**Pro hac vice* pending

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**Pro hac vice* applications to be filed

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